

United States District Court
Eastern District of California

Dennis Martel,

Plaintiff,

vs.

California Department
of Corrections, et al.,

Defendants.

No. Civ. S 04-0014 DFL PAN P

Findings and Recommendations

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Plaintiff is a state prisoner prosecuting this civil rights
action without counsel.

April 28, 2005, the court dismissed plaintiff's claims
against defendants Cal A. Terhune, Tom Carey and the Department
of Corrections pursuant to 28 U.S.C. § 1915A, with leave to
amend. The court informed plaintiff he could proceed against
defendants R. L. Andreasen, Tom Donahue, John J. Dan and J. W.
Moore by submitting materials for service within 15 days, but the
court would construe his election so to proceed as consent to

1 dismissal of his claims against defendants Cal A. Terhune, Tom
2 Carey and the Department of Corrections without leave to amend.

3 Plaintiff has submitted materials for service of defendants
4 R. L. Andreasen, Tom Donahue, John J. Dan and J. W. Moore. I
5 find plaintiff has consented to dismissal of claims against
6 defendants Cal A. Terhune, Tom Carey and the Department of
7 Corrections without leave to amend.

8 Accordingly, the court hereby recommends that claims against
9 defendants Cal A. Terhune, Tom Carey and the Department of
10 Corrections be dismissed without prejudice.

11 Pursuant to the provisions of 28 U.S.C. § 636(b)(1), these
12 findings and recommendations are submitted to the United States
13 District Judge assigned to this case. Written objections may be
14 filed within 20 days of service of these findings and
15 recommendations. The document should be captioned "Objections to
16 Magistrate Judge's Findings and Recommendations." The district
17 judge may accept, reject, or modify these findings and
18 recommendations in whole or in part.

19 Dated: June 9, 2005.

20 /s/ Peter A. Nowinski
21 PETER A. NOWINSKI
22 Magistrate Judge
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